THE HON'BLE MRS JUSTICE T.MEENA KUMARI

&

THE HON'BLE MR JUSTICE G.CHANDRAIAH

WRIT PETITION NO.8241 OF 2007

Dated: 10.07.2007

Between:

1. Divisional Mechanical Engineer
   S.E. Railway (Now East Coast Railway,
   Bhubaneswar) DRM Office, Visakhapatnam and another.

..Petitioners

And

Akkudalai Veerabhadra Rao

.. Respondent.

THE HON'BLE SMT. JUSTICE T.MEENA KUMARI
&
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION NO.8241 OF 2007

ORDER: (Per Hon'ble Smt. Justice T. Meena Kumari)

This is a writ petition filed by the petitioners challenging the order, dated 10.11.2006 passed by the Central Administrative Tribunal in O.A.No.300 of 2005.

The respondent herein is the applicant before the Tribunal.

Originally, the respondent-applicant filed the above O.A., seeking to set aside the order No.WAT/VIG/Major/Mech/Vskp/99/133/959 dated 10/113-2005 by declaring the same as without jurisdiction and consequently, to direct the respondents to reinstate the applicant as Fitter grade II at Visakhapatnam with consequential benefits of duty pay and allowances for the period from 20.9.2002 till the date of his reinstatement.

The tribunal having observed that pending the decision of the High Power Committee in regard to the question of identification of social status of the persons belonging to Vaddi community claiming to be Bentho Oriya (ST), the petitioners-respondents-authorities cannot initiate disciplinary proceedings against the applicant, allowed the O.A., setting aside the proceedings impugned therein and directing the petitioners-authorities to reinstate the applicant into service. Having aggrieved by the same, the Railway Authorities have preferred the present writ petition.

Heard Sri C.V. Rajiv Reddy, learned Counsel representing Smt.

C.V. Vinitha Reddy, learned Counsel appearing for the petitioners and Sri P. Ramabrahmam, learned Counsel appearing for the respondent.

The learned Counsel appearing for the petitioners contended that the father of the applicant does not belong to Bentho (ST) community and the applicant does not belong to ST community and on the basis of a false certificate, the applicant secured the job in the railways and therefore, the petitioners-railways have initiated disciplinary action against the applicant and conducted enquiry and as the charges were proved, he was removed from service. It is further contended that the M.R.O. Tekkali by his letter dated 8.2.1999 had stated that the applicant does not belong to Bentho Oriya caste and he belongs to Vaddi by caste and that the certificate produced by the applicant was not issued from their office. Therefore, the order of the tribunal is liable to be set aside.

On the other hand, the learned Counsel for the respondent-applicant contended that the certificate in question was issued by the M.R.O., Tekkali long back i.e., on 3.4.1986 and it is a valid one, but however, for the reasons best known to them, after a period of 10 years, the petitioners launched disciplinary proceedings against the applicant pointing out the genuineness of the caste certificate and removed him from service and the said action of the petitioners at this length of time, is not sustainable and therefore, the tribunal is justified in passing the order impugned.

It is a case where the petitioners-railways initiated disciplinary action against the applicant nearly after a period of 10 years from the date of his appointment on the ground that he has secured the job by producing a fake caste certificate.

The facts that are undisputed are that the respondent-applicant

was appointed in S.E. Railway, Visakhapatnam, as Trainee Skilled Artisan (Fitter) in grade Rs.900-940 on 25.1.1989 under CF/IEC-WAT on the basis of caste certificate of Bentho Oriya (ST) and subsequently, during the course of his employment, on the ground that the respondent-applicant secured the job by producing the fake Caste Certificate, he was dismissed from service in the year 2005.

Generally, the selection for the posts is being done subject to the verification of the certificates. Admittedly, the applicant was appointed in the year 1989 whereas the genuineness of the certificate in question was doubted and a charge memo was issued on 8.11.1999. But, the silence on the part of the authorities from the date of the appointment of the applicant till the year 1999, leads to draw an adverse inference against the attitude in dismissing the applicant at this length of time, without following the procedure as contemplated under the Rules in question and that too, pending decision of the High Power Committee in this regard and thereby, it amounts to cause prejudice and great hardship to the applicant.

At this juncture, it is contended by the learned Government Pleader that it was clarified by the District Collector, Srikakulam, by his letter dated 11.3.1988 stating that the applicant obtained a false ST certificate and that the M.R.O., Tekkali vide his letter dated 8.2.1999 had stated that the certificate issued to the applicant that he belongs to ST community of Bentho Oriya was not issued from his office and therefore, he is liable to be dismissed from service.

At this stage, irrespective of the fact as to whether the certificate possessed by the applicant, is a fake one or not, now, it is pertinent to note that the applicant was appointed long back in the year 1989. But however, it is not known as to what are the circumstances that have resorted the authorities to probe into the genuineness of a certificate

after a length of 10 years of service.

However, if the action is taken at the earliest point of time it can be inferred that the action of the authorities is just and proper. But, in the instant case, the action taken by the authorities on the certificate after a lapse of 10 years of service that too during the pendency of the decision of the High Power Committee as to the identification of social status of persons belonging to Vaddi Community claiming to be Bentho Oriya (ST), amounts to arbitrariness as well as to cause prejudice to the interests of the applicant.

In this view of the matter and in view of the length of the service of the applicant, We feel it just and proper to modify the order of the tribunal to the following extent:

1) the respondent-applicant shall be reinstated into service within a period of eight (8) weeks from the date of receipt of a copy of the order.
2) the respondent-applicant is not entitled to any back wages. However, it is made clear that this interregnum period, for which, he is not entitled to any back wages as already stated in clause No:1, shall be treated as a continuity of service for the purpose of calculating his pension.
3) It is further made clear that the pay and allowances of the applicant drawn as on the date of the dismissal, shall be continued from the date of his reinstatement.
4) It is also made clear that the respondent-applicant is not entitled to claim any benefits in future on the basis of the ST community, on which basis he secured the job.

Subject to the above modification and directions, this writ petition is disposed of.

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Justice T. Meena Kumari

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Justice G.Chandraiah

Date: 10.7.2007
Nn/gurc

THE HON'BLE SMT. JUSTICE T.MEENA KUMARI
&
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

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WRIT PETITION NO.8241 OF 2007

(Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

Dated: 10.7.2007